

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

BEFORE THE INDIANA  
COMMISSIONER OF INSURANCE

CAUSE NUMBER: 9491-MC10-0809-002

IN THE MATTER OF: )

United Financial System Corporation )  
6510 Telecom Dr. Ste 310 )  
Indianapolis, IN 46278-6030 )

Resident Producer Organization )  
License Number: 1953530 )

Type of Action: Enforcement )

**FILED**

AUG 18 2011

STATE OF INDIANA  
DEPT. OF INSURANCE

**FINAL ORDER**

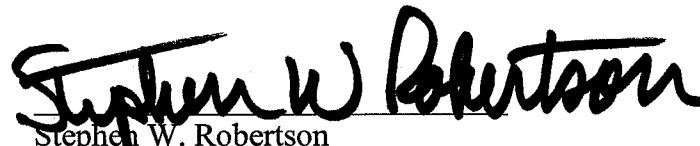
On July 25, 2011, the Administrative Law Judge, Robyn Crosson, filed her Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter. Respondent has not filed an objection with the Commissioner regarding the Administrative Law Judge's Recommended Order, and more than fifteen (15) days have elapsed.

THEREFORE, the Commissioner of Insurance, being fully advised, now hereby adopts in full the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Order, and hereby ORDERS:

1. Respondent's producer license shall be permanently revoked.
2. Respondent shall pay seventy thousand, four hundred ninety six dollars and thirty five cents (\$70,496.35) to Barnes & Thornburg, within ninety (90) days of this Final Order.

3. Respondent shall pay one thousand one hundred eighty seven dollars and fifty cents (\$1,187.50) to RSM McGladery, within ninety (90) days of this Final Order.
- ~~4. Respondent shall pay three thousand two hundred twenty five dollars (\$3,225.00) to K.B. Wilson, within ninety (90) days of this Final Order.~~
5. Respondent shall pay an administrative fine in the amount of thirty thousand dollars (\$30,000.00) to the Indiana Department of Insurance, within ninety (90) days of this Final Order.
6. The fine and restitution payments shall be mailed to the Department of Insurance, Attn: Enforcement Division, 311 W. Washington Street, Suite 103, Indianapolis, IN 46204.

ALL OF WHICH IS ORDERED THIS 18<sup>th</sup> day of August, 2011.

  
Stephen W. Robertson  
Commissioner  
Indiana Department of Insurance

Distribution:

Nikolas P. Mann, Attorney  
Indiana Department of Insurance  
311 West Washington Street, Suite 300  
Indianapolis, Indiana 46240

United Financial System Corporation  
6510 Telecom Dr., Suite 310  
Indianapolis, IN 46278-6030

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**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER**

Administrative Law Judge, Robyn Crosson, having considered and reviewed all of the evidence, will now render a decision in the matter of Respondent United Financial System Corporation ("Respondent"), which came to be heard on April 26, 2011 at approximately 10:00 a.m. at the Indiana Department of Insurance, 311 West Washington Street, Indianapolis, Indiana 46202.

The Indiana Department of Insurance (the "Department") was represented by counsel, Nikolas P. Mann. Respondent chose not to appear. Witnesses testified under oath, evidence was heard, and exhibits were received into evidence.

Based upon the evidence presented at said hearing, the Administrative Law Judge now makes the following Findings of Fact and Conclusions of Law, and issues a Recommended Order as follows:

## FINDINGS OF FACT

1. Respondent holds resident producer license number 1953530. Respondent's license is currently inactive because it was suspended by the Department for failure to comply with Indiana Code § 27-1-3.1-9.
2. In September 2010, the Department selected Respondent for a Market Conduct Examination. Exhibit A.
3. After receiving several formal complaints from Indiana consumers and reviewing the facts of a case which resulted in a judgment against Respondent, the Commissioner determined a Market Conduct Examination was appropriate to review Respondent's business practices. Transcript, April 26, 2011 at pp. 9-10; Exhibit A; See generally, *State of Indiana Ex. Rel. Indiana State Bar Association v. United Financial Systems Corporation, et. al.*, 926 N.E.2d 8 (Ind. 2010).
4. Respondent was properly notified of the Department's authority to conduct a Market Conduct Examination and informed of its rights and obligations during the examination process. Exhibit A; Transcript at pp. 10-11. One such obligation is to bear the expenses of the examination. Exhibit A at p. 2; Transcript at pp. 11-12; Ind. Code § 27-1-3.1-9(d). Costs of an examination include fees incurred by examiners duly appointed by the Commissioner. Exhibit A; Transcript at p. 12: 4-22.
5. For this examination, the Commissioner appointed "Joseph C. Chapelle ... as [chief] examiner" ("Mr. Chapelle"). Exhibit A at p. 3. Mr. Chapelle is an attorney with Barnes & Thornburg, LLP at 11 South Meridian Street, Indianapolis, Indiana 46204 ("Barnes & Thornburg"). As such, payments for Mr. Chapelle's work are invoiced by

and submitted to Barnes & Thornburg. Exhibits A and B.

6. Acting within his authority, the Commissioner appointed other examiners to assist Mr. Chapelle. Transcript at pp. 12-13. RSM McGladery and K.B. Wilson were later appointed by the Commissioner to serve as annuity specialists to assist Mr. Chapelle. Transcript at pp. 17-18.
7. Respondent is required to pay fees billed by RSM McGladery and K.B. Wilson, which are subject to the Department's review. Transcript at pp. 16-17; Exhibit A at p. 2.
8. Respondent was notified by the Department on several occasions of its obligation to pay fees incurred by duly appointed examiners. A letter, dated September 23, 2010, informed Respondent of its duty to pay Mr. Chapelle and provided a legal citation for said duty. Exhibit A.
9. Another letter, dated December 22, 2010, informed Respondent of its duty to pay RSM McGladery for services provided and cited legal authority for said duty. Exhibit C.
10. Respondent was notified in two (2) separate letters of its obligation to submit payment to K.B. Wilson for services rendered. Exhibits D and E.
11. In addition to having knowledge of its duty to pay costs incurred during the Market Conduct Examination, Respondent was also aware of the amounts owed to each duly appointed examiner.
12. On April 6, 2011, the Department received an invoice from Barnes & Thornburg reflecting an unpaid balance for services rendered in connection with Respondent's

Market Conduct Examination dating back to November 23, 2010. Exhibit B at p. 3. After adjusting for an accounting error, the total amount owed by Respondent comes to seventy thousand, four hundred ninety six dollars and thirty five cents (\$70,496.35). Exhibit B; Transcript at pp. 15-16. Respondent has refused to submit any payments on this balance. Exhibit B; Transcript at p. 25.

13. On December 22, 2010, the Department forwarded to Respondent an invoice of services rendered by RSM McGladery for the period of October 31, 2010 to November 27, 2010. Exhibit C at pp. 1-2; Transcript at p. 16: 20-23. The total amount due for this period is one thousand, one hundred eighty seven dollars and fifty cents (\$1,187.50). Exhibit C at p. 2; Transcript at pp. 17-18. Respondent has refused to submit any payments on this balance. Transcript at p. 35: 4-5.
14. Respondent received two (2) separate invoices from K.B. Wilson for services rendered in connection with the Market Conduct Examination. Exhibits D and E. On November 30, 2010, the Department forwarded an invoice of services rendered by K.B. Wilson for the period of September 23, 2010 to October 27, 2010. Exhibit D at p. 3. The total amount due for this period is two thousand, four hundred dollars. (\$2,400.00). Exhibit D at p. 2. On January 3, 2011, the Department forwarded an invoice of services rendered by K.B. Wilson for the period of December 6, 2010 to December 31, 2010. Exhibit E at pp. 2-3. The total amount due for this period is eight hundred twenty five dollars (\$825.00). Exhibit E at p. 2. The total of these invoices is three thousand, two hundred twenty five dollars (\$3,225.00). Exhibits D and E; Transcript at p. 20: 12- 16. Respondent has refused to submit any payments on this

balance. Transcript at p. 35: 5.

15. There is no evidence to indicate Respondent is in a financial position which would render them unable to make payment. Transcript at p. 25: 11-14.
16. Respondent ignored the above mentioned invoices until January 2011. Transcript at pp. 21-22. In a letter dated January 10, 2011, Respondent informed the Department that it received the above mentioned invoices, but would not submit any payment. Exhibit F. In this letter, Respondent took the position that the Department did not have authority to conduct a Market Conduct Examination and thus did not have the authority to compel payment. Exhibit F at p. 2. Respondent also stated that duly appointed examiners would not be paid until after it had complied with the judgment entered by the Indiana Supreme Court. Exhibit F at p. 1.
17. Despite numerous opportunities to do so, Respondent never raised these issues until payment was expected. Transcript at pp. 22-23; *Id.* at 33-34.
18. In a letter dated January 14, 2011, the Department responded to Respondent's January 10, 2011 letter. Exhibit G. In its letter, the Department notified Respondent that failure to pay the above mentioned invoices by January 28, 2011 would result in its license being suspended and provided legal citations for the Department's authority to do so. Exhibit G. The Department did in fact enter an order suspending Respondent's license for failure to submit payments of any kind. Transcript at p. 29:17-20.
19. On February 28, 2011, the Department filed a Statement of Charges against Respondent for failure to facilitate or cooperate with the Market Conduct Examination process. Respondent was properly notified that at an administrative

hearing was scheduled for April 26, 2011 at 10:00 am. Exhibit H.

20. Even after formal charges had been filed, Respondent failed to cooperate with the Department. In a letter dated April 21, 2011, Respondent informed the Department that Respondent did "not plan to attend the [April 26<sup>th</sup>] hearing." Exhibit H at p. 2. Respondent also refused to acknowledge that its Indiana producer license had been suspended and instead urged the Department to permit surrender of its license. Exhibit H at p. 2.
21. In essence, Respondent has attempted to ignore the authority of the Commissioner and the Department of Insurance. Transcript at p. 32: 3-14. To date, Respondent has not submitted payment to the Commissioner's duly appointed examiners nor has Respondent participated in the Department's administrative proceedings. Transcript at pp. 35-36.

#### **CONCLUSIONS OF LAW**

1. The Commissioner of Insurance has jurisdiction over both the subject matter and the parties to this action.
2. This hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code.
3. The Commissioner has the discretionary authority to revoke Respondent's license to sell insurance and to fine Respondent.
4. The Department has met its burden in showing by a preponderance of the evidence that Respondent's conduct is contrary to Indiana Insurance Code and that disciplinary action to include revocation of license is in order.



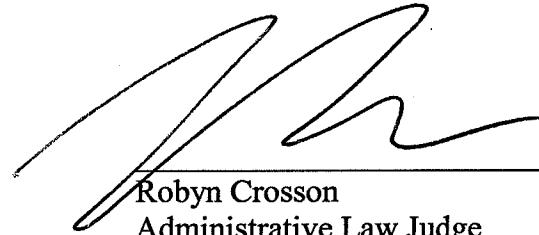
5. Respondent's conduct, as alleged herein, is contrary to Indiana Code § 27-1-3.1-9(d) by failing to bear the costs of the examination.
6. Respondent acted in a manner contrary to Indiana Code § 27-1-3.1-9(b) by failing to facilitate the examination and cooperate with the examination.
7. Respondent acted in a manner contrary to Indiana Code § 27-1-15.6-12(b)(2)(A) by violating the above mentioned insurance laws.
8. Findings of Fact that can be adopted as Conclusions of Law are hereby incorporated herein as such.

### **RECOMMENDED ORDER**

With the Findings of Fact and the Conclusions of Law as stated, the Administrative Law Judge now recommends to the Commissioner of Insurance the following:

1. Respondent's producer license be permanently revoked.
2. Respondent be required to pay Barnes & Thornburg seventy thousand, four hundred ninety six dollars and thirty five cents (\$70,496.35) within ninety (90) days of the Final Order.
3. Respondent be required to pay RSM McGladery one thousand one hundred eighty seven dollars and fifty cents (\$1,187.50) within ninety (90) days of the Final Order.
4. Respondent be required to pay K.B. Wilson three thousand two hundred twenty five dollars (\$3,225.00) within ninety (90) days of the Final Order.
5. Respondent be required to pay an administrative fine to the Department in the amount of thirty thousand dollars (\$30,000.00) within ninety (90) days of the Final Order.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to  
the Commissioner this 25 day of July, 2011.



Robyn Crosson  
Administrative Law Judge

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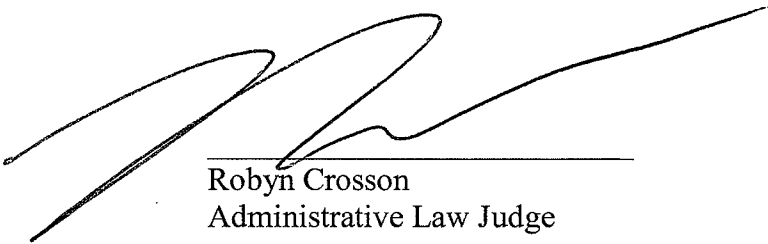
JUL 25 2011

STATE OF INDIANA  
DEPT. OF INSURANCE

**NOTICE OF FILING OF RECOMMENDED ORDER**

The parties to this action are hereby notified that the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Order are deemed filed as of this date.

To preserve an objection to this Order for judicial review, you must object to the Order in a writing that: 1) identifies the basis of your objection with reasonable particularity; and 2) is filed with the ultimate authority for the Final Order, Stephen W. Robertson, Acting Commissioner of the Department of Insurance, within fifteen (15) days from the date of service of this Order.



Robyn Crosson  
Administrative Law Judge

**Distribution:**

**Nikolas P. Mann, Attorney  
Indiana Department of Insurance  
311 West Washington Street, Suite 300  
Indianapolis, Indiana 46240**

**United Financial System Corporation  
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